

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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**FILED**

MAY 07 2004

DEPARTMENT OF REAL ESTATE

\* \* \*

By *Juan Rosas*

In the Matter of the Application of)  
VALENTIN LOPEZ ROSAS, )  
Respondent. )  
\_\_\_\_\_ )

NO. H-8629 SF

OAH No. N2004020332

**DECISION**

The Proposed Decision dated April 5, 2004, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on May 28, 2004.

IT IS SO ORDERED May 5, 2004.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

*John R. Liberator*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

VALENTIN LOPEZ ROSAS,

Respondent.

Case No. H-8629 SF

OAH No. N2004020332

**PROPOSED DECISION**

John K. Markley, Administrative Law Judge, Office of the Administrative Hearings, State of California, heard this matter in Oakland, California on March 15, 2004,

The Department of Real Estate of the State of California ("Department") was represented by Michael B. Rich, Counsel.

Valentin Lopez Rosas, respondent, was present and was represented by Charles Benninghoff, a Professional Advocate.

Evidence was received, the record was closed and the matter was submitted.

**FACTUAL FINDINGS**

1. Les R. Bettencourt ("complainant") made and filed this statement of issues in his official capacity of Deputy Real Estate Commissioner of the State of California.

2. On January 10, 2003, respondent applied to the Department for a real estate salesperson license. In response to Question 25, respondent disclosed a 1993 criminal conviction for misdemeanor theft and a 1999 criminal conviction for driving under the influence of alcohol. However, the respondent failed to disclose a 1991 misdemeanor theft conviction.

3. 1991 Theft Conviction: On October 9, 1991, respondent pled guilty and was convicted of theft, a misdemeanor violation of California Penal Code section 484, in the Municipal Court of Santa Cruz County. This was a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee. Real estate licensees are expected and required to have personal integrity, be honest, and act ethically. The theft conviction calls into question whether respondent has these required qualities.

(a) The underlying facts and circumstances of the 1991 conviction are: Respondent stole a sweater from Mervyn's.

(b) The sentence imposed for the 1991 conviction was probation for 12 months, payment of fines, and performance of 40 hours of community service.

(c) Respondent subsequently performed 59 hours of community service in lieu of payment of the fine and successfully completed this probation. This conviction was expunged pursuant to Penal Code section 1203.4 on May 7, 2003.

4. 1993 Theft Conviction: On August 12, 1993, respondent pled nolo contendere and was convicted of theft, a misdemeanor violation of California Penal Code section 484, in the Municipal Court of Santa Cruz County. This was a crime involving moral turpitude which bears a substantial relationship to the qualifications, function or duties of a real estate license. This theft conviction calls into question whether respondent has the personal integrity and honesty required of real estate licensees.

(a) The underlying facts and circumstances of the 1993 conviction are: Respondent, while a student at San Jose State, purchased a campus parking permit from another student at a discount. The parking permit had been stolen, although respondent testified he did not know it was stolen.

(b) The sentence imposed for this criminal conviction was a suspended 20-day jail term and 12 months of probation under the work release program.

(c) Respondent successfully completed his probation and this conviction was expunged pursuant to Penal Code section 1203.4 on May 7, 2003.

5. 1999 DUI Conviction: On January 15, 1999, respondent pled nolo contendere and was convicted of driving under the influence, a misdemeanor violation of Section 23152(b) of the California Vehicle Code. Driving under the influence of alcohol is a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee. Moral turpitude exists as the conviction for driving under the influence involves a serious breach of the duty owed by the respondent to society at large. Driving under the influence exhibits a deficiency in the character traits necessary and required for licensed real estate salespersons including, but not limited to, trustworthiness, honesty, fidelity to fiduciary duties and the ability and inclination to obey the law. This crime is substantially related to real estate practice as real estate licensees regularly use their private vehicles in their business, including transporting clients to and from viewings of homes. Driving while intoxicated poses a direct risk of injury to these real estate clients and to the public at large. Further, if real estate licensees drink on the job, their judgment will be impaired and they will be unable to fully, fairly and competently represent their clients.

(a) The underlying facts and circumstances of the 1999 conviction are: Respondent had been drinking with his co-workers and was cited for driving his vehicle thereafter. No accident was involved and there were no injuries. No drugs or illegal substances were involved. No evidence was offered that respondent had a continuing problem with alcohol abuse.

(b) The sentence imposed for this conviction was three years of court probation, referral to the sheriff's work program, performance of 141 hours of public service and completion of the First Offender Program.

(c) Respondent subsequently performed the public service, completed the First Offender Program, and successfully completed his probation. This convicted was expunged on May 15, 2003 under Penal Code section 1203.4.

6. There were no mitigating circumstances for any of these three convictions.

7. As to whether respondent has been rehabilitated following these three convictions, the evidence is:

A. Respondent has paid all imposed fines and fees or has performed community service in lieu of such payment.

B. Respondent performed all work alternative programs and community service requirements imposed under the probations.

C. Respondent completed the First Offender Drinking Driver's Program.

D. Respondent successfully completed all three probations and the three convictions have been expunged pursuant to Penal Code section 1203.4.

E. Respondent has abstained from alcoholic consumption and has been sober since the 1999 driving under the influence conviction.

F. Respondent met Libua Bijarano in 2003 and they married in November of 2003. Ms. Bijarano requires that respondent abstain from consumption of alcohol and remain sober, and she strongly supports respondent's efforts to abstain from alcohol consumption. They socialize in non-alcoholic environments, including non-alcoholic salsa dance clubs.

G. Respondent actively participates in his extended family activities and has a good relationship with both his wife's family and his own family. Respondent is especially close to his mother and helps to support her. These family relationships provide stability and support for respondent.

H. Respondent participates in his wife's religious activities and attends the Jehovah's Witnesses meetings. Respondent also attends services at his Catholic Church.

I. Respondent has changed his attitude and realizes the danger that driving under the influence poses to him, his passengers, his family, to other drivers, and to the public. His continuing efforts to abstain from alcoholic consumption reflect this change of attitude.

J. Respondent has also changed his attitude from that existing at the time of his theft convictions. Respondent has grown up and accepted adult responsibilities including the need to provide for his family in a lawful manner.

K. Respondent is honestly remorseful about his earlier criminal convictions and understands that such actions are morally and legally wrong.

L. Respondent performs voluntary community service through his church. These services involve assisting families to obtain loans and do financial planning.

N. Respondent graduated from University of California Santa Cruz in 1999 and worked thereafter in the biotech field. Due to the Silicon Valley economic downturn, respondent now needs to pursue a new career in order to support his family.

O. In an effort to pursue a career in real estate, respondent has taken and passed the minimum courses required for a real estate licensee. Respondent has also taken and passed the real estate license exam.

P. Respondent has a prospective employing broker who will be willing to hire him and supervise his work.

Q. Respondent is current on his major financial obligations.

R. Respondent is gainfully employed as a wholesale loan account executive.

8. Several witnesses testified as to the honesty and integrity of respondent. These included respondent's wife, his mother-in-law and a family friend. Each testified that respondent is a good, honest and trustworthy person who will make a good and honest real estate salesperson. These witnesses also testified that respondent does not have a problem with alcohol, abstains from alcoholic consumption, and socializes in non-alcoholic environments.

9. It has been over four years since respondent was convicted of driving under the influence. Respondent learned his lesson, has abstained from alcoholic consumption, and is strongly supported in this endeavor by his family and friends. Respondent has been sufficiently rehabilitated since his conviction for driving under the influence.

10. It has been 11 years since respondent's most recent theft conviction. There have been no subsequent convictions involving theft or dishonesty. Respondent has made very significant and laudable strides in his personal rehabilitation since the theft convictions.

11. Failure To Disclose Conviction on Application: In the absence of the failure to disclose the 1991 conviction, respondent would be deemed sufficiently rehabilitated. However, Respondent's failure to disclose the 1991 conviction on his 2003 real estate application creates a current question regarding his honesty, his integrity, and his ability and willingness to comply with the laws and regulations applicable to real estate licensees. These are traits which are required of real estate licensees, especially as licensees must regularly make disclosures and representations regarding the quality, condition and value of residential properties and must deal with a multitude of contracts and forms.

12. Question 25 on the real estate application states:

"HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE."

The instructions relating to questions 24 through 26 on the application state:

"Carefully read and provide detailed answers to questions #24-26. You must provide a yes or no response to all questions. 'Convicted' as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction was sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code."

13. Respondent admitted to reading the instructions on the application. Respondent testified that he failed to disclose the 1991 conviction because the judge told him it would be "taken off" and "dismissed". Consequently, respondent thought the conviction did not need to be disclosed. This reason is insufficient in that the quoted instructions expressly require "all" convictions to be disclosed on the application, even those convictions which have been dismissed and expunged.

14. Respondent knowingly made a false statement of material fact required to be disclosed in his application. Respondent's failure to fully disclose all convictions also constitutes a current attempt to procure a real estate license by fraud, misrepresentation, deceit, or by making a material misstatement of fact.

15. Consequently, it would pose a significant danger to the public interest to grant a real estate salesperson license to respondent at this time.

### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2, 3 and 6, cause for denial of the application exists pursuant to Business and Professions Code section 480(a) and 10177(b) in that respondent was convicted of misdemeanor theft, a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate salesperson.

2. By reason of the matters set forth in Findings 2, 4 and 6, cause for denial of the application exists pursuant to Business and Professions Code section 480(a) and 10177(b) in that respondent was convicted of misdemeanor theft, a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate salesperson.

3. By reason of the matters set forth in Findings 2, 5 and 6, cause for denial of the application exists pursuant to Business and Professions Code section 480(a) and 10177(b) in that respondent was convicted of driving while under the influence of alcohol, a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a licensed real estate salesperson.

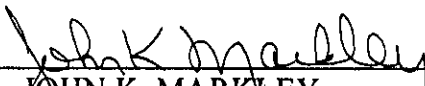
4. By reason of the matters set forth in Findings 2 and 11 through 15, cause for denial of the application exists pursuant to Business and Professions Code section 480(c) in that respondent knowingly made a false statement of fact required to be revealed in his application, and pursuant to Business and Professions Code section 10177(a), attempted to procure a real estate license by fraud, misrepresentation or deceit, or by making any material misstatement of fact.

5. By reason of the matters set forth in Findings 7 through 10, respondent has demonstrated significant and laudable progress in his personal rehabilitation following the convictions relating to theft and driving under the influence of alcohol. Respondent's personal rehabilitation efforts, however laudable, are not yet sufficient to offset the current concern raised by his 2003 failure to fully disclose all convictions on his real estate application. By reason of the matters set forth in Findings 11 through 15, it would be contrary to the public interest to issue respondent a real estate license at this time.

ORDER

The application of Valentin Lopez Rosas for a real estate salesperson license is  
denied.

Dated: April 5, 2004

  
\_\_\_\_\_  
JOHN K. MARKLEY  
Administrative Law Judge  
Office of Administrative Hearings

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
**FEB 13 2004**

**DEPARTMENT OF REAL ESTATE**

*In the Matter of the Application of*

VALENTIN LOPEZ ROSAS

Case No. H-8629 SF

OAH No.

*Respondent*

**NOTICE OF HEARING ON APPLICATION**

***To the above named respondent:***

***You are hereby notified*** that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY--MARCH 15, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

**DEPARTMENT OF REAL ESTATE**

***Dated:*** FEBRUARY 13, 2004

By

*Michael B. Rich*  
**MICHAEL B. RICH, Counsel**

1 MICHAEL B. RICH, Counsel  
2 State Bar No. 84257  
3 DEPARTMENT OF REAL ESTATE  
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8

FILED  
JAN 17 2004

DEPARTMENT OF REAL ESTATE

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9 BEFORE THE  
10 DEPARTMENT OF REAL ESTATE  
11 STATE OF CALIFORNIA

12 \* \* \*

13 In the Matter of the Application of )  
14 VALENTIN LOPEZ ROSAS, ) NO. H-8629 SF  
15 Respondent. ) STATEMENT OF ISSUES  
16 )

17 The Complainant, LES R. BETTENCOURT, a Deputy Real  
18 Estate Commissioner of the State of California, for Statement of  
19 Issues against VALENTIN LOPEZ ROSAS (hereinafter "Respondent"),  
20 is informed and alleges as follows:

21 I

22 Respondent made application to the Department of Real  
23 Estate of the State of California for a real estate salesperson  
24 license on or about January 10, 2003, with the knowledge and  
25 understanding that any license issued as a result of said  
26 application would be subject to the conditions of Section 10153.4  
27 of the Business and Professions Code.

1 II

2 Complainant, LES R. BETTENCOURT, a Deputy Real Estate  
3 Commissioner of the State of California, makes this Statement of  
4 Issues in his official capacity and not otherwise.

5 III

6 On or about October 9, 1991, in the Municipal Court of  
7 the State of California, County of Santa Cruz, Respondent was  
8 convicted of a violation of Section 484 of the California Penal  
9 Code (Theft), a crime involving moral turpitude which bears a  
10 substantial relationship under Section 2910, Title 10, California  
11 Code of Regulations, to the qualifications, functions, or duties  
12 of a real estate licensee.

13 IV

14 On or about August 12, 1993, in the Municipal Court of  
15 the State of California, County of Santa Cruz, Respondent was  
16 convicted of a violation of Section 484 of the California Penal  
17 Code (Theft), a crime involving moral turpitude which bears a  
18 substantial relationship under Section 2910, Title 10, California  
19 Code of Regulations, to the qualifications, functions, or duties  
20 of a real estate licensee.

21 V

22 On or about January 15, 1999, in the Municipal Court  
23 of the State of California, County of San Mateo, Respondent was  
24 convicted of a violation of Section 23152(b) of the California  
25 Vehicle Code (Driving under the influence while having a blood  
26 alcohol level of .08% or more), a crime involving moral turpitude  
27 which bears a substantial relationship under Section 2910,

1 Title 10, California Code of Regulations, to the qualifications,  
2 functions, or duties of a real estate licensee.

3 VI

4 In response to Questions 25 and 27 of the license  
5 application, requiring Respondent to reveal the court conviction,  
6 arresting agency, date of conviction, type of conviction, code  
7 name and section number violated, disposition and case number,  
8 for each conviction of any violation of law (other than for  
9 convictions for minor traffic citations not constituting a  
10 misdemeanor or felony offense), Respondent concealed and failed  
11 to reveal the conviction described in Paragraph III above.

12 VII

13 Respondent's failure to reveal the conviction described  
14 III, above, in the Application constitutes an attempt in Paragraph  
15 to procure a real estate license by fraud, misrepresentation, or  
16 deceit, or by making a material misstatement of fact in the  
17 application, which failure is cause for denial of Respondent's  
18 license application under Sections 480(c) and 10177(a) of the  
19 California Business and Professions Code.

20 VIII

21 The crimes of which Respondent was convicted, as alleged  
22 in Paragraphs III, and IV, individually and/or collectively,  
23 constitute cause for denial of Respondent's application for a  
24 real estate license under Sections 480(a) and/or 10177(b) of the  
25 California Business and Professions Code.

26 ///

27 ///

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.

Les R. Bettencourt  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 13<sup>th</sup> day of November, 2003.